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SUPREME COURT, U. S.

NO. 1368

FILED
MAR 19 1971
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In The Supreme Court of the United States

Appeal from
The Court of Appeals of Logan County, Ohio
and the Supreme Court of Ohio

HAROLD C. FOREMAN,
Appellant

vs.

THE CITY OF BELLEFONTAINE, et al,
Appellees

MOTION TO DISMISS APPEAL

HAROLD C. FOREMAN
124 East Spring Avenue
Bellefontaine, Ohio 43311
Appellant, in Propria Persona

RONALD E. HADLEY
128 North Main Street
Bellefontaine, Ohio 43311
City Solicitor and Attorney for Appellee

WILLIAM J. BROWN
Attorney General of Ohio
State Capital Annex
Columbus, Ohio 43215
Amicus Curiae and Attorney for
Court of Appeals, et al.

CIVIL ACTION No. 1368

In the Supreme Court of the United States

HAROLD C. FOREMAN
124 East Spring Avenue
Bellefontaine, Ohio 43311
Appellant

vs.

THE CITY OF BELLEFONTAINE
Bellefontaine, Ohio 43311
Appellee

MOTION TO DISMISS APPEAL

Object

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, the Appellee moves to dismiss the appeal from the decision of the Supreme Court of the State of Ohio. The grounds of this motion are as follows:

I. The validity of a state statute was not expressly pased on by the state court.

II. The judgment sought to be reviewed rests on an adequate non-federal basis.

III. The appeal does not present a substantial federal question.

Respectfully submitted,

THE CITY OF BELLEFONTAINE,
OHIO, APPELLEE

By: Ronald E. Hadley
City Solicitor
128 North Main Street
Bellefontaine, Ohio 43311

FACTS ON WHICH MOTION TO DISMISS IS BASED

Appellant relies on U.S.C. 28: 1257 (2) as conferring jurisdiction upon the United States Supreme Court, which section provides in part as follows:

U. S. C. 28: 1257. State courts; appeal: certiorari

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

The decision of the Supreme Court of Ohio, rendered November 25, 1970, in Case No. 70-98, and which is printed on Page B-40 of the Appendix in Appellant's Statement in Support of Juridiction, shows clearly that the validity of a state statute was neither drawn into question nor expressly passed on by the Supreme Court of the State of Ohio.

Appellee, in support of its motion to dismiss, further urges that the decisions of the lower courts were based on an adequate non-federal basis. The case was originally heard in the Logan County, Ohio, Common Pleas Court upon stipulation as to facts. Although the Appellant charged in the origianl petition that there were constitutional issues, the courts disposed of the case on other than constitutional grounds. (See Pages A-31 and A-35 of the Appendix in Appellant's Statement in Support of Jurisdiction.)

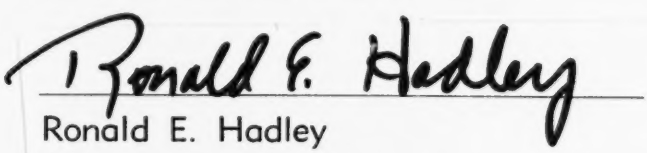
The Appellee further urges that the appeal does not present a substantial federal question although

Appellant recites that an ordinance of the City of Bellefontaine, Ohio, and several statutes of the State of Ohio are in conflict with the Constitution of the United States. The Appellee contends, however, that Appellant's allegation of unconstitutionality are directed at a group of state statutes and are too general and too indefinite to raise constitutional questions and fail to define with particularily what portions may have offended claimed constitutional rights. This contention was passed on by this court in the case of Staub vs. Baxley, 355 U. S. 313, 2 L. Ed. 2d 302.

Appellant's Statement in Support of Jurisdiction contains many arguments and exhibits previously presented (Foreman, et al. v. City, Case No. 878, October Term, 1962, United States Supreme Court), but which are not in issue in the present appeal.

For the foregoing reasons, Appellee requests that the motion to dismiss the appeal be granted.

Respectfully submitted,



Ronald E. Hadley
Attorney for Appellee,
City of Bellefontaine, Ohio
128 North Main Street
Bellefontaine, Ohio 43311

CERTIFICATE

I, Ronald E. Hadley, attorney for the City of Bellefontaine, Ohio, appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 19th day of March, 1971, I served a copy of the foregoing Motion on the Appellant, Harold C. Foreman, by mailing a copy in a duly addressed envelope, with postage prepaid, to 124 East Spring Avenue, Bellefontaine, Ohio 43311; and on the Appellee, William J. Brown, Attorney General of Ohio, by mailing a copy in a duly addressed envelope, with postage prepaid, to State Capital Annex, Columbus, Ohio, 43215.

Ronald E. Hadley

Ronald E. Hadley, Attorney
for City of Bellefontaine, Ohio
128 North Main Street
Bellefontaine, Ohio 43311